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REMARKS/ARGUMENTS

Claims 1-25 are pending. Claims 19, and 23-25 are amended.

The rejections of claims 19-21 under Section 112 and the objections to claims 23-25 are believed to be obviated in view of the foregoing amendments.

The claims stand rejected over the prior art as follows:

Claims	Rejection
22	as anticipated under 35 U.S.C. 102(b) by Ruth et al (US 4,695,677)
1-18	as unpatentable under 35 U.S.C. 103(a) over Lance (GB 2,187,771)
19-21	as unpatentable under 35 U.S.C. 103(a) over Wilson (US 4,263,477)
23-24	as unpatentable under 35 U.S.C. 103(a) over Ruth et al (US 4,695,677) in view of Lance (GB 2,187,771)
25	as unpatentable under 35 U.S.C. 103(a) over Ruth et al (US 4,695,677) in view of Wilson (US 4,263,477)

All rejections are thus respectfully traversed.

Claim 22 and Claims 23-25

For § 102 anticipation, a single reference must teach (i.e. identically describe) each and every element of the rejected claim. Jamesbury Corp. v. Litton Industrial Products, 756 F.2d 1556, 225 U.S.P.Q. 253 (Fed. Cir. 1985); Atlas Powder v. E.I. du Pont, 750 F.2d 1569, 224 U.S.P.Q. 409 (Fed. Cir. 1984). The cited Ruth et al. fails to teach each and every element of claim 22.

Claim 22 is directed to a fence system, comprising a current carrying wire connectable to a source of electric current, a ground wire, and a unitary insulator configured to receive the current carrying wire and the ground wire and to maintain the wires in a spaced apart and electrically isolated orientation.

Contrary to the Examiner's contentions, the fence system disclosed in Ruth et al. does not describe the claimed structure. The tensioning system of Ruth et al. is not a unitary or single insulator. Rather, it is made up of a pair of separate tensioners 11 and 12 (Col. 3, lines 11-13).

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The tensioners 11 and 12 are separately installed and have interlocking shoulders to limit the degree of rotation. As will be appreciated, a system having two interactive tensioners each of which is independently installed on a pole does not provide a unitary or single insulator. Also, when only a single tensioner is used as seen in FIG. 2, it supports only a single wire. See also, Col. 4, lines 2-5).

Accordingly, Ruth et al. cannot be said to anticipate the subject matter of claim 22 and withdrawal of the rejection is respectfully requested.

In a similar manner, the Section 103 rejections of claims 23-25 based primarily on Ruth et al. should also be withdrawn. As will be appreciated, in each case, the claims require a unitary or single insulator for supporting a pair of wires. For the reasons set forth above, there is no teaching or suggestion in Ruth et al. for use of a single or unitary insulator to support a pair of wires as required by the claims.

Claims 1-18

With regard to the rejection of Claims 1-18 as unpatentable under 35 U.S.C. 103(a) over Lance (GB 2,187,771), the Examiner has conceded in the Office Action that the Lance reference fails to respond to the limitations in the claims that, among other things, **Lance does not disclose** an insulator having a second retention member configured as set forth in the claims. Notwithstanding this deficiency, the Examiner, citing St. Regis Paper Co. v. Bemis Co., Inc., 549 F.2d 833, 193 USPQ2d 8 (7th Cir. 1977) for the proposition that the mere duplication of the working parts of a device involves only routine skill in the art, concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second retention member configured as set forth in the claims.

However, rejections based on 35 U.S.C. Section 103(a) must rest on a factual basis. See, Ex Parte Boris E. Makutonin, Frank G. Oliverio, and Matthew J. Zdinak, 2003 WL 23014547 (Bd. Pat.App & Interf. Jan. 21, 2003), citing, In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). Accordingly, in making such a rejection, the Examiner has the initial duty of supplying the requisite factual basis and may not resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies on the factual basis. Id.

In this case, the examiner has failed to advance any factual basis to supply the admitted deficiencies of Lance vis-a-vis the subject matter recited in the claims. Instead, the Examiner has

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attempted to bridge the evidentiary gaps of the Lance reference by resorting to a so-called mechanical rule of obviousness allegedly established by the St. Regis case. Such a rule does not exist and the reliance thereon by the Examiner to establish obviousness under Section 103 is improper. See, Ex Parte Boris E. Makutonin, Frank G. Oliverio, and Matthew J. Zdinak, 2003 WL 23014547 (Bd. Pat.App & Interf. Jan. 21, 2003), citing, In re Ochiai, 71 F.3d 1565, 1570, 37 USPQ2d 1127, 1132 (Fed. Cir. 1995) and In re Wright, 343 F.2d 761, 769-70, 145 USPQ 182, 190 (CCPA 1965).

Accordingly, the rejection of claims 1-18 under Section 103 based on Lance are unsustainable and withdrawal thereof is respectfully requested.

Claims 19-21

With regard to the rejection of Claims 19-21 as unpatentable under 35 U.S.C. 103(a) over Wilson 94,263,477), the Examiner has conceded in the Office Action that **Wilson does not disclose an insulator having the second rigid tab element of the claims.** The Examiner, citing St. Regis Paper Co. v. Bemis Co., Inc., 549 F.2d 833, 193 USPQ2d 8 (7th Cir. 1977) concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second rigid tab.

For the reasons set forth above in connection with the discussion of claims 1-18, the Examiner's reliance on the alleged "mechanical rule" of St. Regis to establish obviousness under Section 103 is improper. Accordingly, withdrawal of this basis of rejection is requested.

Applicant does not intend to surrender any range of equivalents under the Doctrine of Equivalents in regard to any claim limitation that appears in the final claims in any patent that may issue from this or any related application. Applicant expressly reserves the right to resort to the Doctrine of Equivalents for all limitations in regard to any future assertion of infringement of any claim, whether the limitation was present in an original claim or added by amendment a claim to or referenced in any argument to distinguish any claim from any prior art. All claims in any patent issued from this or any related application represent a statutorily presumed valid and patentable combination of structure and/or steps, and it is this combination which is presumed to patentably distinguish from the prior art, not any particular limitation of any claim.


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Reconsideration and issuance of a notice of allowance is requested. In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our **Deposit Account No. 12-2355**.

Respectfully submitted,

LUEDEKA, NEELY & GRAHAM, P.C.

By:


Robert O. Fox

Registration No. 34,165

September 20, 2004
P.O. Box 1871
Knoxville, Tennessee 37901
(865) 546-4305

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Examiner Adolfo NINO, Group Art Unit 2831, FAX NO. 703-872-9306 on the date shown below.

September 20, 2004
Date:



Robert O. Fox, Reg. No. 34,165